SUPREME COURT, U. S.
DEC 5 1973
MICHAEL RODAK, JR., CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1973

No. 73-876

JESUS CONTRERAS, et al., *Petitioners,*

vs.

GROWER SHIPPER VEGETABLE ASSOCIATION OF CENTRAL CALIFORNIA, et al., *Respondents.*

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

JAMES VANCE HENRY,
900 "M" Street,
Fresno, California 93723,
Counsel for Petitioners.

WILLIAM H. CARDER,
P.O. Box 1821,
Salinas, California 93901,

JEROME COHEN,
P.O. Box 62,
Keene, California 93531,
Of Counsel.

PERNAU-WALSH PRINTING CO. - 562 MISSION STREET - SAN FRANCISCO - CA 94105

Subject Index

	Page
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statutes Involved	2
Statement of the Case	3
Reasons for Granting the Writ	7
Conclusion	17

Table of Authorities Cited

Cases	Pages
Anderson v. Shipowners Assn. of the Pacific Coast, 272 U.S. 359 (1926)	9
Billy Baxter, Inc. v. Coca-Cola Co., 431 F.2d 183 (2d Cir., 1970), cert. denied, 401 U.S. 923 (1971)	15
Calderone Enterprises Corp. v. United Artists' Theatre Circuit, Inc., 454 F.2d 1292 (2d Cir., 1971), cert. denied, 406 U.S. 930 (1972)	7
Congress Bldg. Corp. v. Loew's, Inc., 246 F.2d 587 (7th Cir., 1957)	15
Continental Ore Co. v. Union Carbide and Carbon Corp., 370 U.S. 690 (1962)	14
Dailey v. Quality School Plan, Inc., 380 F.2d 484 (5th Cir., 1967)	9, 10, 16
Fortner Enterprises, Inc. v. United States Steel Corp., 394 U.S. 495 (1969)	11, 12
Hawaii v. Standard Oil Co. of California, 405 U.S. 251 (1972)	12, 15
Hoopes v. Union Oil Co. of California, 374 F.2d 480 (9th Cir., 1967)	6
Intl. Assn. of Heat and Frost Insulators and Asbestos Workers v. United Contractors Assn., 483 F.2d 384, 394 (3rd Cir., 1973)	9
Karseal Corp. v. Richfield Oil Corp., 221 F.2d 358 (9th Cir., 1955)	6, 7
Mandeville Island Farms, Inc. v. American Crystal Sugar Co., 334 U.S. 219 (1948)	12
Nichols v. Spencer Intl. Press, Inc., 371 F.2d 332 (7th Cir., 1967)	9
Perma Life Mufflers, Inc. v. International Parts Corp., 392 U.S. 134 (1968)	12
Radiant Burners, Inc. v. Peoples Gas Light and Coke Co., 364 U.S. 656 (1961)	13, 14

Pages

Radovich v. National Football League, 352 U.S. 445 (1957) 9, 12, 13, 16

Roseland v. Phister Mfg. Co., 125 F.2d 417 (7th Cir., 1942) 8, 9, 16

South Carolina Council of Milk Producers, Inc. v. Newton, 360 F.2d 414 (4th Cir., 1966) 10

Standard Oil Co. of New Jersey v. United States, 221 U.S. 1 (1910) 7

United States v. Columbia Steel Co., 334 U.S. 495 (1948) .. 15

United States v. General Motors Corp., 384 U.S. 127 (1966) 15

United States v. United States Gypsum Co., 340 U.S. 76 (1950) 15

Vines v. General Outdoor Advertising Co., 171 F.2d 487 (2d Cir., 1948) 8, 9

Wilson v. Ringsby Truck Lines, Inc., 320 F.Supp. 699 (D.C. Colo., 1970) 16

Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100 (1969) 11

Rules

Federal Rules of Civil Procedure:

Rule 12 5

Rule 56 5

Statutes

Clayton Anti-Trust Act, Section 4 (15 U.S.C. § 15) 2, 5, 7, 9, 11, 12, 13, 15

Clayton Anti-Trust Act, Sections 12-27 (15 U.S.C. §§ 12-27) 3

Sherman Anti-Trust Act, Sections 1 and 2 (15 U.S.C. §§ 1, 2) 4, 12

Sherman Anti-Trust Act, Sections 1-7 (15 U.S.C. §§ 1-7) .. 3

28 U.S.C. Section 1254(1) 2

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1973

No.

JESUS CONTRERAS, et al., *Petitioners,*

VS.

GROWER SHIPPER VEGETABLE ASSOCIATION OF CENTRAL CALIFORNIA, et al., *Respondents.*

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

Petitioners Jesus Contreras, Luis Herrera, Guadalupe Montana, and Fidel Valdez respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in the above-entitled proceeding on September 7, 1973.

OPINIONS BELOW

The opinion of the Court of Appeals, not yet reported, appears in Appendix A hereto, *infra* at pp.

i-iv. The unreported opinion of the United States District Court for the Northern District of California appears in Appendix B hereto, *infra* at pp. v-viii.

JURISDICTION

The judgment of the Court of Appeals was entered on September 7, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Whether an employee may bring a suit for treble damages, under Section 4 of the Clayton Act (15 U.S.C. §15), where he has suffered loss of employment opportunities as a direct result of his employer's participation in an agreement with other producers to raise the price of a commodity, in violation of the antitrust laws, by restricting its production and sale.

STATUTES INVOLVED

Section 4 of the Clayton Anti-Trust Act (15 U.S.C. §15) provides as follows:

> §15. Suits by persons injured; amount of recovery
>
> Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in

> which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

The relevant provisions of the Sherman Anti-Trust Act (15 U.S.C. §§1-7) are set forth in Appendix C hereto, *infra* at pp. ix-x.

STATEMENT OF THE CASE

On September 3, 1970, petitioners filed a complaint for treble damages and injunctive relief, under the Sherman and Clayton Anti-Trust Acts (15 U.S.C. §§1-7 and 12-27), in the United States District Court for the Northern District of California. (R. 1-6).[1] The complaint alleged that petitioners were individuals who resided in the Northern District of California and were "employed regularly as farm workers engaged in the growing, harvesting, and/or processing of iceberg lettuce." (R. 2). Respondents were alleged to be growers and shippers of agricultural commodities, doing business in the Northern District of California, who "grow and/or ship in excess of 90 per cent of all the iceberg lettuce produced and sold in the United States." (R. 2-3).[2]

Plaintiffs further alleged in their complaint that on or about January 1, 1965, the respondent growers

---

[1]"R." references are to the Record on Appeal which is on file in the Court of Appeals below.

[2]The full names and capacities of the 39 respondents are set forth *infra* at pp. i-ii.

and shippers had violated Sections 1 and 2 of the Sherman Act by entering into a "continuing contract, combination and conspiracy to restrain interstate trade and commerce in iceberg lettuce by illegally fixing the price thereof at an artificially high and noncompetitive price." (R. 3-4). More specifically, the complaint alleged that "[respondents], and each of them, [had] agreed among themselves and with their other co-conspirators to limit the total amount of iceberg lettuce produced and sold by them each year, each individual conspirator to be limited to a pro-rata share of the total based upon his average production for the preceding five years." (R. 4). In furtherance of such agreement, respondents were alleged to have "reduced their production, harvesting, and sale of iceberg lettuce to a level below that which would otherwise prevail [and] thereby reduced both the hours per day and days per year worked by their agricultural employees engaged in the growing, harvesting or processing of such lettuce." (R. 4). The complaint alleged that as a direct and proximate result of respondents' acts, "the total amount of iceberg lettuce moving in interstate commerce [had] been reduced, and the price of such lettuce [had] thereby been raised to and maintained at an artificially high and noncompetitive level." (R. 4).

The petitioners, who had brought suit on behalf of a class consisting of all lettuce workers employed by respondents on or after the date of the above-described agreement (R. 3), alleged that "as a direct and proximate result of the aforesaid violations of the

antitrust laws, the work available to the farm workers employed in the growing, harvesting and processing of iceberg lettuce [had] been substantially reduced." (R. 5). They further alleged that in such circumstances, they had been injured in their "business or property" within the meaning of Section 4 of the Clayton Act, set forth *supra,* and thus had standing to challenge respondents' antitrust violations in a civil suit for treble damages. (R. 5).

On February 11, 1971, respondents filed their joint motion for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure. (R. 36-39). Said motion was made on the ground that petitioners had no standing to complain of the *per se* antitrust violations alleged in their complaint because the loss of employment opportunities flowing from such violations was not injury to their "business or property" within the meaning of Section 4 of the Clayton Act. (R. 36). On April 8, 1971, United States District Judge Alfonso J. Zirpoli issued his written order and decision treating respondents' motion for summary judgment as a motion to dismiss pursuant to Rule 12, Federal Rules of Civil Procedure, and on that basis granting the motion and directing that petitioners' complaint be dismissed. (Appendix B, *infra,* at pp. v-viii). Judge Zirpoli concluded as follows *(infra,* p. vii):

> Here, by plaintiffs' own allegations, the purpose of the conspiracy was to raise the price of iceberg lettuce. This was allegedly to be accomplished by reducing production and dividing total production between growers. The injury to plain-

> tiffs was not necessary to achieve the purposes of the conspiracy, even though it may have followed as a logical result of the other acts. For this reason, plaintiffs lack the requisite standing to sue, and defendants' motion to dismiss must be granted.

On April 20, 1971, plaintiffs filed timely notice of appeal from the foregoing judgment of dismissal. (R. 265). On September 7, 1973, the United States Court of Appeals for the Ninth Circuit affirmed Judge Zirpoli's decision. (Appendix A, *infra* at pp. i-iv). It held as follows *(infra,* pp. iii-iv):

> In determining that the appellants did not have standing to bring this action under Sec. 4 of the Clayton Act, the district court relied on the following decisions: *Conference of Studio Unions v. Loew's,* 193 F.2d 51, 54-55 (9th Cir. 1951), cert. denied 342 U.S. 919 (1952); *Hoopes v. Union Oil Company,* 374 F.2d 480 (9th Cir. 1967); *Twentieth Century Fox Film Corp. v. Goldwyn,* 328 F.2d 190 (9th Cir. 1964), cert. denied 379 U.S. 880 (1964); *Karseal Corp. v. Richfield Oil Corp.,* 221 F.2d 358 (9th Cir. 1955).
>
> We are in complete agreement with the district court that these cases clearly indicate that the appellants do not come within the 'target area' as that term is defined in this Circuit for determining the question of standing to sue under Section 4 of the Clayton Act. See also *In Re Multidistrict Vehicle Air Pollution M.D.L. No. 31,* ..... F.2d ..... No. 71-1241 (9th Cir. June 4, 1973).

REASONS FOR GRANTING THE WRIT

1. Petitioners alleged in their complaint that they had been injured, through loss of employment opportunities, as a direct result of production limitations imposed by their employers pursuant to an agreement to reduce the supply, and thus raise the price, of a commodity moving in interstate commerce. Never at any stage of the proceedings below was it disputed that such an agreement is a *per se* violation of the antitrust laws. See *Standard Oil Co. of New Jersey v. United States,* 221 U.S. 1 (1910). The sole question before the District Court and the Court of Appeals was whether petitioners had been "injured in [their] business or property by reason of" the agreement within the meaning of Section 4 of the Clayton Act (15 U.S.C. §15).

The Court of Appeals, affirming the District Court, concluded that they had not. In so holding, it relied upon the "target area" concept of antitrust standing first referred to in *Karseal Corp. v. Richfield Oil Corp.,* 221 F.2d 358 (9th Cir., 1955), and subsequently adopted in various forms by a number of the other circuits. See, e.g., *Calderone Enterprises Corp. v. United Artists' Theatre Circuit, Inc.,* 454 F.2d 1292 (2d Cir., 1971), cert. denied, 406 U.S. 930 (1972). Citing a number of its own previous decisions, the Court of Appeals adopted the reasoning of the District Court, which had held that petitioners were not in the "target area" contemplated by Section 4 of the Clayton Act because the injury they suffered "was not necessary to achieve the purposes of the conspiracy, even

though it may have followed as a logical result of [respondents'] other acts." (*supra,* p. 6).

Petitioners submit that the decision below is in direct conflict with those of at least three other circuits, all of whom have reached a contrary conclusion on substantially similar facts. Thus, in *Roseland v. Phister Mfg. Co.,* 125 F.2d 417 (7th Cir., 1942), the three defendants were the sole manufacturers of certain fire prevention equipment. The plaintiff was a salesman employed by one of the three. He alleged that the defendants had entered into a conspiracy to eliminate competition among themselves in the sale of their products by allocating geographical markets, dividing customers, and establishing fixed prices. He further alleged that as a "necessary result" of the agreement, he had been "deprived of the opportunity to bid in certain territories where he was exclusive representative of [his employer] . . . and deprived of the opportunity of making sales . . ." (125 F.2d at 419). The Seventh Circuit, concluding that in such circumstances the plaintiff had been injured in his "business or property by reason of" the defendants' unlawful scheme, allowed recovery. (125 F.2d at 419-420).

Similarly, in *Vines v. General Outdoor Advertising Co.,* 171 F.2d 487 (2d Cir. 1948), the plaintiff was an advertising salesman who alleged that his employer, by transferring one of his accounts to a competitor pursuant to an unlawful agreement similar to that in *Roseland v. Phister Mfg. Co., supra,* had injured him in his "business or property" within the meaning of

Section 4 of the Clayton Act. The Second Circuit, vacating a summary judgment against the plaintiff, held that it could not deny him an opportunity "to prove that the defendant employer would have allowed him to continue to be the solicitor of the Liebmann Breweries, if it had not transferred the account to Outdoor Advertising Co., Inc.; or to prove that that transfer was in pursuance of an unlawful agreement between the two companies." (171 F.2d at 491).

And finally, in *Dailey v. Quality School Plan, Inc.*, 380 F.2d 484 (5th Cir., 1967), the Fifth Circuit permitted recovery for loss of employment opportunities suffered by an employee as a result of antitrust violations participated in by his employer. The plaintiff in that case, like the plaintiffs in *Roseland* and *Vines, supra,* was a commission salesman (380 F.2d at 485).[3] He alleged that as a direct result of the acquisition of his former employer by another firm, pursuant to a sale agreement which violated both the Sherman and Clayton Acts, he had suffered first a reduction in the size of his territory and then a termination of his employment. *(Id.* at 486). He brought suit, under Section 4 of the Clayton Act, against all parties to the agreement.

---

[3]The instant case may not, however, be distinguished from *Roseland, Vines,* and *Dailey* on the ground that the employment of a rank-and-file worker is not "business or property" within the meaning of the statute. This Court has in fact held to the contrary on at least two occasions. See *Anderson v. Shipowners Assn. of the Pacific Coast,* 272 U.S. 359 (1926); and *Radovich v. National Football League,* 352 U.S. 451 (1957). See also *Nichols v. Spencer Intl. Press, Inc.,* 371 F.2d 332, 334 (7th Cir., 1967); and *Intl. Assn. of Heat and Frost Insulators and Asbestos Workers v. United Contractors Assn.,* 483 F.2d 384, 394 (3rd Cir., 1973).

The Fifth Circuit, reversing a district court dismissal of his complaint, on the ground that he lacked standing to sue, concluded that ". . . the injury to Dailey was direct and not a mere incidental result of the acquisition." *(Id.* at 486-487). In reaching this conclusion, it adopted a view of the "target area" requirement which had been taken by the Fourth Circuit in *South Carolina Council of Milk Producers, Inc. v. Newton,* 360 F.2d 414 (4th Cir., 1966). There, the court held that:

> The pivot of decision presently is whether the defendant's asserted conduct was the proximate cause of the plaintiffs' asserted injury. If the damage was merely incidental or consequential, or if the defendant's antitrust acts are so removed from the injury as to be only remotely causative, the plaintiffs have not been injured 'by reason of anything forbidden by the antitrust laws' as contemplated by the Clayton Act.

(360 F.2d at 419-420). Applying that test to the allegations of the complaint in *Dailey v. Quality School Plan, Inc.,* the Fifth Circuit concluded that the plaintiff in that case had established the existence of proximate cause sufficient to give him standing to sue. *(Id.* at 487-488).

The foregoing decisions cannot be reconciled with the one below. In each case, the defendant employers were party to an unlawful agreement aimed at enhancing the price of their product by eliminating competition among sellers in the product market. Implementation of the agreement required in each case that the defendant employers either cut back their

overall sales or forego selling in certain markets altogether. And the plaintiff employees in each case suffered loss of employment opportunities as a direct result of the reduction in sales.

Under the reasoning adopted by the Court of Appeals below, the plaintiffs in each of the cases cited above would have been denied recovery because their injury "was not necessary to achieve the purposes of the conspiracy, even though it may have followed as a logical result of [the conspirators'] other acts." *(supra,* pp. 5-6). The other circuits, however, have rejected such reasoning. Relying upon the direct and proximate causal relationship between the antitrust violation of the employer and the injury to his employee, they allowed standing to sue under Section 4 of the Clayton Act in circumstances where the Court of Appeals below would clearly have denied it. This Court can and should resolve the resulting conflict of decision.

2. The decision of the Court of Appeals in the instant case is not only inconsistent with the decisions of at least three other circuits, but contrary to the national antitrust policies articulated in prior opinions of this Court. Thus, in *Zenith Radio Corp. v. Hazeltine Research Inc.,* 395 U.S. 100 (1969), the Court noted that ". . . the purpose of giving private parties treble-damage and injunctive remedies was not merely to provide private relief, but was to serve as well the high purpose of enforcing the antitrust laws." (395 U.S. at 130-131). Similarly, in *Fortner Enterprises, Inc. v. United States Steel Corp.,* 394 U.S. 495 (1969),

the Court recognized that ". . . Congress has encouraged private antitrust litigation not merely to compensate those who have been directly injured but also to vindicate the important public interest in free competition." (394 U.S. at 502). See also *Hawaii v. Standard Oil Co. of California,* 405 U.S. 251, 262 (1972); and *Perma Life Mufflers, Inc. v. International Parts Corp.,* 392 U.S. 134, 139 (1968).

In accordance with this strong congressional policy in favor of private antitrust litigation, the Court has extended standing under Section 4 of the Clayton Act to a wide range of persons seeking relief from violations of the antitrust laws. "The Statute does not confine its protection to consumers, or to purchasers, or to sellers . . . the Act is comprehensive in its terms and coverage, protecting all who are made victims of the forbidden practices by whomever they may be perpetrated." *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.,* 334 U.S. 219, 236 (1948). It has also cautioned against overly restrictive interpretations of the statute which would devitalize it as a vehicle for protection of the public interest. In *Radovich v. National Football League,* 352 U.S. 445 (1957), the Court granted standing to sue under Section 4 of the Clayton Act to a professional football player who alleged that he had been denied employment as the result of a "black-listing" agreement which was "the result of a conspiracy among the [defendants] to monopolize commerce in professional football among the States . . . in violation of §§1 and 2 of the Sherman Act." (352 U.S. at 448-449). It reasoned as follows:

> Petitioners claim need only be 'tested under the Sherman Act's general prohibition on unreasonable restraints of trade,' [citation omitted], and meet the requirement that petitioner has thereby suffered injury. Congress has, by legislative fiat, determined that such prohibited activities are injurious to the public and has provided sanctions allowing private enforcement of the antitrust laws by an aggrieved party. These laws protect the victims of the forbidden practices as well as the public [citation omitted]. Furthermore, Congress itself has placed the private antitrust litigant in a most favorable position through the enactment of § 5 of the Clayton Act. [citation omitted]. *In the face of such a policy this Court should not add requirements to burden the private litigant beyond what is specifically set forth by Congress in those laws.*

(352 U.S. at 453-454, emphasis added). See also *Radiant Burners, Inc. v. Peoples Gas Light and Coke Co.*, 364 U.S. 656, 660 (1961).

The decision of the Court of Appeals in the instant case is directly contrary to the liberal interpretation of Section 4 of the Clayton Act mandated by this Court in *Radovich v. National Football League* and the other cases cited *supra*. In short, the petitioners have alleged both an antitrust violation by respondents and an injury to their own business or property by reason of that violation. Nothing more is required by the statute, and additional obstacles to standing should not be created by the courts. As the Court held in *Radiant Burners, Inc. v. Peoples Gas Light and Coke Co., supra,* "to state a claim upon which relief

can be granted . . . allegations adequate to show a violation and, in a private treble damage action, that plaintiff was damaged thereby are all the law requires." (364 U.S. at 660).

Nor did the allegations here fail to establish "the necessary causal connection between respondents' antitrust violations and petitioners' injury." *Continental Ore Co. v. Union Carbide and Carbon Corp.*, 370 U.S. 690, 700 (1962). While it is true that not all injuries which might conceivably be traced to a violation of the antitrust laws are compensable in a suit for treble damages *(Hawaii v. Standard Oil Co. of California, supra)*, recovery may be denied only where the injury asserted is so remote as to indicate an absence of proximate cause. *Zenith Radio Corp. v. Hazeltine Research, Inc., supra,* 395 U.S. at 114, n. 9 ("It is enough that the illegality is shown to be a material cause of the injury . . ."). See also *Perma Life Mufflers, Inc. v. International Parts Corp., supra,* 392 U.S. at 143-144 (concurring opinion).

The injuries sustained by petitioners in the instant case were in no sense "remote" *(Continental Ore Co. v. Union Carbide and Carbon Corp., supra,* 370 U.S. at 700). They arose from petitioners' employment relationship with respondents and were a direct, immediate and foreseeable result of the implementation of respondents' unlawful agreement to limit their production of iceberg lettuce. See *Hoopes v. Union Oil Co. of California,* 374 F.2d 480, 485 (9th Cir., 1967) (cited by this Court in *Hawaii v. Standard Oil Co. of California, supra).* Nor were such injuries in any

sense "derivative." (See *Congress Bldg. Corp. v. Loew's Inc.*, 246 F.2d 587, 590-591 (7th Cir., 1957).) They were unique to the petitioners and in no way the incidental result of an injury to some other victim of respondents' conspiracy. Compare *Billy Baxter, Inc. v. Coca-Cola Co.*, 431 F.2d 183 (2d Cir., 1970), cert. denied, 401 U.S. 923 (1971) (also cited in *Hawaii v. Standard Oil Co. of California, supra).*

Petitioners have thus established a clear and direct causal relationship between their own injuries and the unlawful conduct of the respondents. In dismissing their complaint for treble damages, on the ground that such injuries were not "necessary to achieve the purposes of the conspiracy" *(supra,* p. 6), the courts below imposed an additional requirement for standing which finds no support in the language of Section 4 of the Clayton Act. Their view of the statute would require not only an allegation of proximate cause, but a further allegation that the respondents, in conspiring to fix the price of their product, had a specific intent to injure the petitioners. We submit that such an interpretation is totally at odds with the many decisions of this Court holding that the absence of such intent is irrelevant in the case of a *per se* violation. *U.S. v. Columbia Steel Co.*, 334 U.S. 495, 522-523 (1948); *U.S. v. General Motors Corp.*, 384 U.S. 127, 146 (1966); *U.S. v. United States Gypsum Co.*, 340 U.S. 76, 86-87 (1950). It is, moreover, contrary to the many other decisions cited above which hold that the courts should not discourage private antitrust enforcement by creating "requirements to bur-

den the private litigant beyond what is specifically set forth . . ." *Radovich v. National Football League, supra.* This Court should accordingly grant certiorari to correct the erroneous decision of the Court of Appeals below.

3. While the decision below is in direct conflict with several established principles of antitrust law (*supra,* pp. 11-16), the specific question presented by the instant case—whether an employee can recover treble damages for lost employment opportunities sustained by reason of his employer's participation in an anticompetitive marketing arrangement—has not yet been decided by this Court. The facts of *Roseland v. Phister Mfg. Co., Vines v. General Outdoor Advertising Co.,* and *Dailey v. Quality School Plan, Inc.,* all cited *supra,* demonstrate that this question is an important and recurring one. In almost every case, the implementation of such an arrangement will directly affect the economic interests of persons employed by the conspirators. See also *Wilson v. Ringsby Truck Lines, Inc.,* 320 F.Supp. 699 (D.C. Colo., 1970). The question of such persons' standing to challenge the unlawful arrangement should be decided by the Court in the instant proceeding.

CONCLUSION

For the above reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

JAMES VANCE HENRY,
Counsel for Petitioners.

WILLIAM H. CARDER,
JEROME COHEN,
Of Counsel.

December 4, 1973.

(Appendices Follow)

Appendix A

United States Court of Appeals for the Ninth Circuit

Jesus Contreras, Luis Herrera, Guadalupe Montana, and Fidel Valdez, individually and as representatives of a class consisting of all those similarly situated,

Plaintiffs-Appellants,

vs.

Grower Shipper Vegetable Association of Central California, an unincorporated association; Herbert Fleming, individually and as President of said association; Admiral Packing Company, a California corporation; Arrow Lettuce Co., a California corporation; B & L Produce, Inc., a California corporation; California Coastal Farms, Inc., a California corporation; Bruce Church, Inc., a California corporation; Thomas McNamara, individually and as President of Bruce Church, Inc.; Consolidated Growers, Inc., a California corporation; J. J. Crosetti Co., a California corporation; J. J. Crosetti, individually and as President of J. J. Crosetti Co.; D'Arrigo Bros. of California, a California corporation; Andrew D'Arrigo, individually and as President of D'Arrigo Bros. of California; Eckel Produce Co., a partnership; Robert Englund, individually and doing business as R. T. Englund Company; Freshpict Foods, Inc., a California corporation; Howard Leach, individually and as President of Freshpict Foods, Inc.; The Garin Company, Inc., a California corporation; Green Valley Produce Co-Op, an agricultural marketing association; Robert A. Smith, individually and as General Manager of said association; Harden Farms of California, a California corporation; Hitchcock Packing Co., Inc., a California corporation; Carl Joseph Maggio, Inc., a California corporation; Major Farms, Inc., a California corporation; Merit Packing Company, a California corporation; Merrill Farms, a California corporation; Oshita, Inc., a California corporation; Jack Oshita, individually and as President of Oshita, Inc.; Pacific Fruit & Produce Co., a California corporation; Pacific Lettuce Co., a California corporation; Sakata Ranches, Inc., a California

No. 71-1936

corporation; Salinas Lettuce Farmers Co-Op, an agricultural marketing association; Salinas Marketing Cooperative, an agricultural marketing cooperative; Denny Bertelsman, individually and as General Manager of Salinas Marketing Cooperative; Ralph Samsel, individually and doing business as Ralph Samsel Co.; Schuman Farms, a California corporation; Sears Bros. & Co., a California corporation; West Coast Farms, a limited partnership; Bud Antle, Inc., a California corporation; Robert V. Antle, individually and as Vice-President of Bud Antle, Inc., and Does 1 through 200, inclusive,

Defendants-Appellees.

[September 7, 1973]

Appeal from the United States District Court for the Northern District of California

---

Before: CHAMBERS and TRASK, Circuit Judges and TAYLOR, District Judge*.

PER CURIAM:

The plaintiffs-appellants, Jesus Contreras, et al., are appealing from an order entered on April 8, 1971, by the district court granting the motion of defendants-appellees, Grower Shipper Vegetable Association of Central California, et al., to dismiss appellants' complaint. The motion was granted on the ground that appellants lacked the requisite standing to sue under Section 4 of the Clayton Act, Title 15 U.S.C. §15.

The appellants are agricultural employees engaged as field workers in the growing, harvesting and pro-

---

*Of the District of Idaho, sitting by designation.

cessing of iceberg lettuce. They allege that the appellees contracted, combined and conspired in interstate trade and commerce to fix prices for iceberg lettuce at an artificially high and noncompetitive price by limiting the total amount of iceberg lettuce produced and sold by them each year. Appellants claim they were injured in their business or property in that the work available to them was reduced by appellees' action in limiting the amount of lettuce production.

The appellees claim that the appeal was premature in that it was not taken from a final order since it dismissed the complaint and not the cause of action. In light of the decision in *Firchau v. Diamond National Corp.,* 345 F.2d 269 (1965), we believe, in the circumstances of this case, the appeal was not premature.

In determining that the appellants did not have standing to bring this action under Sec. 4 of the Clayton Act, the district court relied on the following decisions: *Conference of Studio Unions v. Loew's, Inc.,* 193 F.2d 51, 54-55 (9th Cir. 1951), cert. denied 342 U.S. 919 (1952); *Hoopes v. Union Oil Company,* 374 F.2d 480 (9th Cir. 1967); *Twentieth Century Fox Film Corp. v. Goldwyn,* 328 F.2d 190 (9th Cir. 1964), cert. denied 379 U.S. 880 (1964); *Karseal Corp. v. Richfield Oil Corp.,* 221 F.2d 358 (9th Cir. 1955).

We are in complete agreement with the district court that these cases clearly indicate that the appellants do not come within the "target area" as that term is defined in this Circuit for determining the question of standing to sue under Section 4 of the

Clayton Act. See also *In re Multidistrict Vehicle Air Pollution M.D.L. No. 31,* ..... F.2d ..... No. 71-1241 (9th Cir. June 4, 1973).

Accordingly, we AFFIRM.

Appendix B

United States District Court
for the Northern District of California

No. C-70 1891 AJZ

Jesus Contreras, et al.,
Plaintiffs,

vs.

Grower Shipper Vegetable Association of Central California, an unincorporated association, et al.,
Defendants.

Bud Antle, Inc., a corporation, on behalf of itself and of a class consisting of all those similarly situated,
Counterclaimant,

vs.

Jesus Contreras, et al.,
Counterdefendants and Additional Parties Defendant.

[Filed April 8, 1971]

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

This is an antitrust action brought under §§ 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2) and § 4 of the Clayton Act (15 U.S.C. § 15), alleging in substance that defendants, growers and shippers of iceberg

lettuce and their "trade association," entered into a contract, combination or conspiracy to restrain interstate trade in iceberg lettuce and thereby raise the price of iceberg lettuce through acts consisting of limiting the total amount of iceberg lettuce produced and dividing the market for such lettuce between them. Plaintiffs bring this action on their own behalf and as representatives of all farm workers who are now or have, since September 15, 1966, been employed by defendants as farm workers engaged in growing, harvesting and/or processing of iceberg lettuce. They allege that they have been "injured in their business or property" by acts of the defendants in that they have lost certain opportunities to work by reason of the defendants' limitation of their lettuce production. Defendants have, in this proceeding, filed a motion for summary judgment which the Court and the parties treated as a motion to dismiss the complaint on the grounds that plaintiffs lack the requisite standing to sue. After hearing argument and considering the briefs of all parties, the Court concludes that defendants' motion to dismiss should be granted.

The law in this Circuit on this subject is clear. In order to maintain an action of this nature, plaintiffs must be "within that area of the economy which is endangered by a breakdown of competitive conditions in a particular industry" *Conference of Studio Unions v. Loew's, Inc.,* 193 F. 2d 51, 54-55 (9th Cir. 1951), *cert. denied* 342 U.S. 919 (1952); *accord Hoopes v. Union Oil Company,* 374 F.2d 480 (9th

Cir. 1967); *Twentieth Century Fox Film Corp. v. Goldwyn,* 328 F.2d 190 (9th Cir. 1964), *cert. denied* 379 U.S. 880 (1964); *Karseal Corp. v. Richfield Oil Corp.,* 221 F.2d 358 (9th Cir. 1955).

A review of these cases indicates that there is standing only when the injury to the plaintiff is a necessary consequence of an act, intended to further the economic concentration sought by defendants, which *must* occur to achieve that end. Thus, vitality of the decision by the Ninth Circuit is in no way impaired by *Radovich v. National Football League,* 352 U.S. 451 (1957), where the injury to the "blacklisted" football player had to occur so as to "pursuade" players not to sign with football teams from the rival league, thereby forcing that league out of existence.

Here, by plaintiffs' own allegations, the purpose of the conspiracy was to raise the price of iceberg lettuce. This was allegedly to be accomplished by reducing production and dividing total production between growers. The injury to plaintiffs was not necessary to achieve the purposes of the conspiracy, even though it may have followed as a logical result of the other acts. For this reason, plaintiffs lack the requisite standing to sue, and defendants' motion to dismiss must be granted.

In reaching this conclusion, the Court takes no cognizance of defendants' argument that the real dispute is a labor dispute and that this action is merely one of many different actions brought to harass defendants. Not only is there a total lack of real evidence to support this contention, even were it true,

plaintiffs would not be estopped from raising anti-trust issues if they were otherwise in a position to do so.

For the reasons stated above, IT IS ORDERED that defendants' motion to dismiss the complaint is granted and the complaint is dismissed, each party to bear its own costs.

Dated: April 8, 1971.

Alfonso J. Zirpoli
United States District Judge

Appendix C

The relevant provisions of the Sherman Anti-Trust Act (15 U.S.C. §§ 1-7) are as follows:

§1. Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided,* That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: *Provided further,* That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenace of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between

persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

§2. Monopolizing trade a misdemeanor; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.